

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE NO. 2008-154
VantagePoint)	
)	
Materials Management Office)	POSTING DATE:
IFB No. 5400000577)	
Advertising Campaign for)	DECEMBER 29, 2008
<u>Department of Commerce</u>)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from VantagePoint. With this request for proposals (RFP), the Materials Management Office (MMO) attempts to procure an advertising campaign for the Department of Commerce (DOC). In the letter, VantagePoint filed two letters protesting MMO's intent to award to Virilion. In the first letter dated November 21, 2008, VantagePoint alleged in five points of protest that 1) the state should award the contract to a South Carolina company (this allegation was restated in several of the protest points), 2) Virilion's experience as a full-service agency was not in keeping with the requirements of the RFP, and 3) VantagePoint offered the most advantageous offer and the State erred in rejecting it proposal as nonresponsive to the requirements of the RFP.¹ With its first letter, Vantage Point submitted a Freedom of Information Act request for a long list of documents from the procurement file. After reviewing the information provided by MMO, and learning that its proposal had been rejected as nonresponsive to the requirements of the RFP, Vantage Point filed a second letter of protest dated December 4, 2008 alleging: 1) The wording of the RFP did not make it clear that the Department was expecting hard costs to be included in the Price, 2) The scope of work required lists services only, making it unnecessary to list hard costs in the total Price, 3) VantagePoint did include all aspects of the project in their total Price and did not reduce the material requirements of the solicitation, 4) Determining

¹ During the hearing, Vantage Point withdrew protest point #4. that "Awarding this contract with an amount at least 47% higher (\$600,000 vs. \$408,000) than that of other qualified offers appears to be an inefficient use of taxpayer dollars" of the November 21, 2008 letter.

exact hard costs, including media, would not be possible until a portion of the scope of work was completed, 5) The awarded contract's ratio of production to in-market costs is not keeping with industry standards, 6) We were not allowed the opportunity to get clarification on potentially confusing wording regarding price in the RFP, and 7) The awarded proposal should also be deemed Non-Responsive.

In order to resolve the matter, the CPO conducted a hearing December 16, 2008. Appearing before the CPO were VantagePoint, represented by Craig O'Neal and Dave McQuaid; Virilion, represented by Dan Soloman; DOC, represented by Karen Manning, Esq.; and MMO, represented by John Stevens, State Procurement Officer.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates and facts are relevant to the protest:

1. On October 3, 2008, MMO issued the IFB. [Ex. 1]
2. On October 10, 2008, MMO closed the question period.
3. On October 27, 2008, MMO opened the following proposals:

Offerors

Cargo, LLC
Guthrie Marketing Group
Jackson Dawson Communications South
VantagePoint
Virilion

4. On November 20, 2008, MMO posted a statement of intent to award to Virilion. [Ex. 6]
5. On November 21, 2008, the CPO received VantagePoint's first letter of protest.
6. On December 4, 2008, the CPO received VantagePoint's second protest letter.

MOTIONS TO DISMISS

At the outset of the hearing, MMO asked the CPO to dismiss protest issues 1, Awarding this contract to an out-of-state agency is not in keeping with the Department's stated purpose, and 2, Awarding this contract to an out-of-state agency send South Carolina taxpayer dollars out of state, from the November 21, 2008 letter arguing that the Consolidated Procurement Code (Code) excludes RFPs from the application of the state's resident vendor preferences.

The CPO agrees. SC Code section 11-35-1524, which grants authority for consideration of preferences for resident vendors and products made, manufactured, or grown in South Carolina, reads, "This section shall not apply . . . to any solicitation conducted under Section 11-35-1530." The Code does not provide authority for consideration of residence in awarding a RFP. The motion to dismiss issues number 1 and 2 from the November 21, 2008 letter is granted.

In a second motion, MMO asked the CPO to dismiss protest issue number 5 that begins with "Awarding this contract without thoroughly vetting all qualified in-state respondents creates the appearance that every effort was not made to use an in-state firm." However, issue 5 contained a second paragraph which raised other issues which, while possibly redundant, were relevant and germane to cognizable grounds of protest. Therefore, this motion is denied.

REQUIREMENTS OF THE RFP

The RFP required offerors to propose an advertising campaign for the DOC. It read that MMO "is soliciting proposals for the professional services of a full-service marketing or advertising agency that will work collaboratively with the . . . [DOC] to provide strategic, creative and media services to assist in Commerce's efforts to recruit investment and jobs to South Carolina." [Ex. 1, p. 3, Budget] By consensus, the parties agreed the term "Full Service" requires provision of both off line or traditional services including print, radio, and television related services and contemporary online or internet related services. As

background, the RFP offered “Historically, the . . . [DOC] has utilized print media for marketing and advertising.” The RFP signaled to the offerors, however, that DOC intended to shift its focus “to utilize more digital and online advertising and market conditions.” [Ex. 1, p. 3, Background and History]

As requirements, the RFP listed the following obligations of the contractor:

- The Contractor will identify Commerce’s target markets (domestic and international), reaching decision-makers within these markets effectively and determining which forms of media will be the most effective in reaching these markets and decision-makers.
- The Contractor will make recommendations to Commerce regarding additional research needed to guide the development of strategic recommendations or creative concepts. The Offeror must have the ability [not actually deliver] to obtain or conduct such research. [Emphasis added.]
- The campaign must have a means to be adaptive and responsive to market conditions, evolving target industries and overall effectiveness. The campaign will be a cost effective means to responding to these factors and provide a greater degree of flexibility to achieve the agency’s advertising objectives.
- The Contractor will create an overall brand for the strategic campaign by providing creative and design services to accommodate the promotion of the campaign, and by providing media buying services (for online and off-line placement). The contractor will also assist Commerce with adapting quickly if the marketing efforts are not providing the desired results. [Emphasis added.]
- The Contractor will recommend integrated marketing communications to ensure that the agency’s message for this campaign is consistent and relevant to Commerce’s target audience. [Emphasis added.]
- The Contractor will develop a campaign that will offer measurable results. Advertising will drive phone calls, emails and traffic to the Commerce Web site. If possible, the campaign will generate prospect leads. These results will act as a means of gauging the effectiveness of the advertising. [Emphasis added.]
- The Contractor will develop an online e-marketing campaign, search engine optimization (SEO), search engine marketing (SEM), pay-per-click, etc. as well as expanding capabilities to undertake Web 2.0 activities and offline marketing efforts. [Emphasis added.]
- The Contractor must be able to [as opposed to actually do] make effective recommendations to tie online media to the Commerce Web site. [Emphasis added.]
- The Contractor must be able to recommend [as opposed to actually do] Web analytics to increase traffic to the Commerce Web site. [Emphasis added.]

- The Contractor must provide project management services including:
 - Conducting weekly calls regarding campaign's status;
 - Provide monthly progress reports to include budget reports and project effectiveness.
 - Provide monthly planning sessions.
 - Provide oral or written presentations regarding strategic and creative plans as requested. [Emphasis added.]
- The Department of Commerce will make all final decisions on media purchasing based on the recommendations of the Contractor. [Ex. 1, p.13, Requirements] [Emphasis added.]

The RFP required of vendors:

- The Offeror must be a full-service agency with experience in design, market research, strategic development and implementation.
- The Offeror must have the capabilities to specifically target a narrow audience in order to effectively market the state of South Carolina for economic development purposes. [Emphasis added.]
- The Offeror must have the capabilities to identify advertising opportunities that will achieve Commerce's goals to strategically target prospects. [Emphasis added.]
- The Offeror must have developed a comparable media campaign for at least three other clients. The Offeror must be willing to provide examples of this work. [Emphasis added.]
- The Offeror must be able to produce and implement approved creative concepts, including graphic design and illustration, video, copywriting, talent and ownership negotiations, pre-press and printing.
- The Offeror must be able to perform all aspects of video, audio, digital or electronic media direction, production and post-production. [Emphasis added.]
- The Offeror must have the following in-house capabilities:
 - Creative capabilities.
 - Media purchasing capabilities.
 - Technical capabilities to ensure responsiveness and prompt reaction to make proactive changes as needed.
 - Ability to provide research or recommend a means to identify the most effective ways to reach a target audience. [Emphasis added.]
 - Ability to measure the effectiveness of a campaign. [Emphasis added.]
- The Offeror must have online search advertising and website optimization experience. [Ex. 1, p. 14, Vendor Requirements]

Relative to the protest, regarding the information for offerors to submit, the RFP reads further:

3. Described [sic] Offeror's ability to produce and implement approved creative concepts, including graphic design and illustration, video, copywriting, talent, and ownership negotiations, pre-press and

printing. In addition, Offeror must demonstrate ability to perform all aspects of video, audio, digital or electronic media direction, production, and post-production. [Ex. 1, p.16, Experience/Capability/References] [Emphasis added.]

4. The Offeror must demonstrate the ability to perform the following in-house capabilities:

d. Ability to provide research [Ex. 1. p. 16, Experience/Capability/References] [Emphasis added.]

Regarding offerors' price offers, the RFP read:

Provide a total Price to include all aspects of the work associated with the RFP for year one only. Price must consist of the total of Creative Price, which will include design, concept development, copy writing and any other services deemed to be "creative" in nature and Consulting Price, which will include research, ad placement recommendations and ad placements, media purchasing, web optimization and any other services deemed to "consulting" in nature. Any Offeror who submits an estimate or fails to include all aspects of the project in their total Price will be deemed non-responsive. [Ex. 1 p. 17, Price]

The RFP defined "WORK" to mean "all labor, materials, equipment and services provided by the Contractor to fulfill the Contractor's obligations under the Contract." [Ex. 1 p. 4, Definitions]

CONCLUSIONS OF LAW

In its proposal, VantagePoint offered as its price proposal, "The total fixed price for providing all RFP-specified strategic, creative and media services is **\$408,000** for year one." [Emphasis theirs] Vantage Point wrote further:

Exclusions

The total price excludes hard costs apart from the professional services rendered by VantagePoint. These include but are not necessarily limited to the following:

- Photographic/video footage costs
- Printing costs
- Gross media costs
- Syndicated research costs
- Field costs for implementing primary research. [Ex. 8, p. 26, Price]

Due to VantagePoint's exclusions in its price, MMO rejected Vantage Point's proposal writing:

In reviewing the bid response submitted by **VantagePoint, Inc.**, it is evident that total possible price to the State could not be determined. **VantagePoint's** proposal listed "Photography/video footage costs, Printing costs, Gross media costs, Syndicated research costs, (and) Field costs for implementing primary research" specifically as exclusions from Price. In addition, their proposal did not include "all aspects of the project in their total Price" as required in section IV., Information for Offerors to Submit, part D., Price. In effect, the material requirements of the solicitation were modified and reduced. Therefore, the proposal submitted by **VantagePoint, Inc.**, does not meet the requirements as outlined in the State solicitation Request for Proposal No. 5400000577. [Emphasis theirs]

The Code defines a responsive offeror as "a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals." [11-35-1410(7)]

VantagePoint argues that it could not offer a fully burdened fixed price including hard costs, which include actual implementation of the campaign, i.e., printing costs, video production costs, ad placement costs, etc., without direction from Commerce in determining the actual ads for VantagePoint to produce and the scope of the media campaigns. They note the RFP requirement that "The Department of Commerce will make all final decisions on media purchasing based on the recommendations of the Contractor" [Ex. 1, p.13, Requirements] [Emphasis added] makes it impossible to predict these actual costs.

Further, VantagePoint argues that the price provision of the RFP only required it to offer a price for creating the campaign and consulting with DOC; not actual production of the campaign. Regrettably, the CPO agrees. The RFP required "a total Price to include all aspects of the work associated with the RFP for year one only. But, what work was actually required? In much of the language of the RFP, the offeror must demonstrate the capability to perform the work. See Ex. 1. p. 16, Experience/Capability/References and Ex. 1, p. 14, Vendor Requirements. Phrases such as "will make recommendations" to Commerce and "The Offeror must have the ability" and "will create" an overall brand for the strategic campaign "by providing creative and design services" and "will recommend" and "must have the capabilities" and "must be able to produce" were used liberally in the RFP. One would expect such terms in the section of the RFP on offeror

experience, capability, and references, but not in the section of the RFP entitled “**SCOPE OF WORK/SPECIFICATIONS**”. Very few specifics were provided the prospective offerors in the RFP regarding the deliverables actually required of the contractor. What are they actually required to do?

Further, regarding price, the RFP reads that Price must consist of the total of “Creative Price,” which will include design, concept development, copy writing and any other services deemed to be “creative” in nature and “Consulting Price,” which will include research, ad placement recommendations and ad placements, media purchasing, web optimization and any other services deemed to be “consulting” in nature.” Sure the RFP read further, “Any Offeror who submits an estimate or fails to include all aspects of the project in their total Price will be deemed non-responsive”, but to what deliverable? [Ex. 1, p. 17, Price]

VantagePoint argues that it should have been afforded the opportunity to seek clarification of the RFP. The CPO finds that the RFP did allow such an opportunity, providing for questions to be submitted in writing during the period from October 3, 2008 to October 10, 2008. [Ex. 1, cover page] VantagePoint did not avail itself of that opportunity but instead telephoned Chris Manos of MMO, but were turned away because the question period had ended. The RFP requires offerors to submit an offer that represents that it has read and understands the solicitation. It states that “Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror’s risk.” [Ex. 1, p. 7, Duty to Inquire] VantagePoint argues that it did just that; submit a proposal compliant with the stated requirements of the RFP.

DETERMINATION

VantagePoint did not take direct exception to the RFP by excluding in its price certain hard costs; the price requirement of the RFP did not require it. VantagePoint excluded hard costs to include, but not be limited to Photographic/video footage costs, Printing costs, Gross media costs, Syndicated research costs, and Field costs for implementing primary research. After painstaking hours of study, the CPO can find no

explicit requirement in the RFP that an offeror include these activities in its deliverables or in its price proposal. Therefore, VantagePoint's proposal cannot be rejected for omitting them.

MMO warned offerors above and further that "If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined." [Ex. 1, p. 8, Responsiveness] But, the question remains as to what fixed price was required and what must it include. It is troubling that all five offerors had difficulty in answering the question of price – two were rejected and three were asked to clarify. For example, Virilion offered "We will architect and execute all the work proposed for between \$450,000 and \$600,000." Jackson-Dawson stated a working total of \$571,800 and an opportunistic reserve of \$28,200. [Ex. 10]

True - VantagePoint's exclusions from its price made it impossible for the state to determine the total possible cost to the State of creating and implementing the campaign. But, VantagePoint did offer a fixed price for the services actually required by the price proposal requirement of the RFP – creative services and consulting services.

Therefore, the CPO finds that VantagePoint's proposal was responsive to the requirements of the RFP and therefore should not have been rejected. The protest is granted.

VantagePoint also alleged that Virilion was nonresponsive to the price provision of the RFP. If one is; the other is also. If one is not, neither is.

The real question is one of appropriate remedy. SC Code section 11-35-4310 reads:

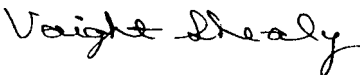
2) Remedies Prior to Award. If, prior to award of a contract, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award may be:

- (a) canceled;
- (b) revised to comply with the law and rebid; or
- (c) awarded in a manner that complies with the provisions of this code.

The CPO finds that this RFP is irreparably flawed in that it does not define with sufficient clarity the deliverables required of the offerors or the scope of price. The CPO directs that MMO cancel the award to Virilion, work with DOC officials to correct the solicitation and resolicit.

Despite the time and effort expended on this process, including the Solicitation and the Evaluations, it is unfortunate but the Award cannot be made. While this may not be the largest of State contracts, they are public funds and each dollar must be spent wisely and carefully, particularly right now. This contract is to assist and foster an important State purpose—economic development. The public fisc, particularly in these economic times, cannot be utilized effectively where the value to be received is not clearly identified and described. To permit the current RFP and its responses to control how State monies are spent would not be in the best interests of its citizens.²

Regarding VantagePoint's allegation that determining exact hard costs, including media, would not be possible until a portion of the scope of work was completed; the CPO recognizes that it might be a better option. For that matter, the best option may be to define the scope of work very well and ask offerors to propose fully burdened campaigns, including creative design, research and consultation with DOC, and production of the finished products for the available budget of \$600,000 per year.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

December 29, 2008

Date

Columbia, S.C.

² While the description of the services and products sought in the RFP was provided by the Department of Commerce to MMO, Materials Management must share in the responsibility for the Solicitation because it was the responsibility of MMO to have insisted upon requirements which ensure that Public Funds are not spent without clear and cogent direction.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

December 4, 2008

Protest Response

Solicitation: 5400000577

Description: SC Department of Commerce Advertising Campaign

Dear Mr. Manos:

Thank you for your prompt and detailed response to the relief points we listed in our letter of protest dated November 21, 2008. This letter serves as our response to the Determination of a Non-Responsive Proposal, as dated November 12, 2008. We want to stress that we respect the department's decision and process, but nonetheless feel that, based on multiple points throughout the RFP, we acted in good faith to fulfill the requirements of the RFP and should not be disqualified.

Grounds:

We respectfully request a reconsideration of the Determination of a Non-Responsive Proposal, based on the following reasoning.

1. The wording of the RFP did not make it clear that the Department was expecting hard costs to be included in the Price. The RFP specifically requests a "total Price" in section IV, part D. This price was to "consist of the total of Creative Price, which will include design, concept development, copy writing and any other services deemed to be "creative" in nature and Consulting Price, which will include research ad placement recommendations and ad placements, media purchasing, web optimization and any other services deemed to be "consulting" in nature."

Multiple people, both inside and outside of VantagePoint, with many years' experience responding to RFPs, agreed that this wording of the scope of work that made up the total Price referred to professional services *only*, and not hard costs. We therefore hold that we did respond appropriately with our Price submission.

2. The scope of the work required lists services *only*, making it unnecessary to list hard costs in the total Price. In twelve different statements on pages 3, 13, and 14 of the RFP, specific references to the word "services," or work that would be considered a "service," is stated as requirements of the scope of work. These references include:

- *professional services
- *strategic, creative and media services
- *identify Commerce's target markets
- *make recommendations
- *provide creative and design services
- *recommend integrated marketing communications
- *develop a campaign
- *make effective recommendations
- *recommend Web analytics
- *provide project management
- *based on the recommendations of the Contractor

The preponderance of the evidence would suggest that the scope of work is largely service and consultative in nature.

In addition, the statement on page 14 that "The Department of Commerce will make all final decisions on media purchasing based on the recommendations of the Contractor." further illustrates to us that it would be impossible to specify exactly certain hard costs, in this case media, in our proposal.

3. VantagePoint *did* include all aspects of the project in their total Price and *did not* reduce the material requirements of the solicitation. As shown in points 1 and 2, the entire scope of the Project as defined in the RFP was service-related. In addition, our total Price very clearly stated it was made up of Creative Price and Consulting Price – which incorporates all aspects of the Project as required in section IV, part D. We respectfully submit that we did meet all qualifications and that to disqualify our proposal because we specifically excluded items *not* listed in the RFP is unmerited.

4. Determining exact hard costs, including media, would not be possible until a portion of the scope of work was completed. We feel it would be not in the best interest of the Department, and even wasteful, to specify exact hard cost budgets for items like printing and media placement without performing due diligence in research, identifying the markets the Department wished to pursue, and other common accepted business marketing practices, as specified in the RFP under Section III, requirements.

To do so would assume that we would know how much money to spend and where without performing any of the work associated with the contract. We would liken this to a builder giving a quote for a house without having seen a blueprint – or in this case, even knowing how many rooms would be in the house.

5. The awarded contract's ratio of production to in-market costs is not in keeping with industry standards. As stated in point 1, we felt the wording of the RFP very strongly indicated this was a contract for services only. We factored this assumption into the budget range, and, in conjunction with research into Department of Commerce budgets concluded that there was substantial additional budget for actual media and other hard costs.

If it had been clear that the \$450,000-\$600,000 range was for the entirety of the marketing effort, including the hard costs, *VantagePoint's Price would have been considerably less.* Marketing best practice has always been that you spend approximately 1/3 of your total budget on the production and services, and 2/3 of the budget in market.

As such, we also feel that Virillion's proposal, which has a ratio of 5/8 production/services to 3/8 in market, is wasteful of South Carolina taxpayer dollars.

6. We were not allowed the opportunity to get clarification on potentially confusing wording regarding price in the RFP. We recognized soon after we read the RFP that the pricing provisions could be potentially confusing. Although we requested clarification on this point within two business days after receiving the RFP, because our request was submitted after the deadline for questions had expired, we were not allowed to receive the clarification we requested.

7. **The awarded proposal should also be deemed Non-Responsive.** Section IV, part D, Price states that "any Offerer who submits an estimate . . . will be deemed non-responsive." In Virillion's response, they state "We will architect and execute all the work proposed for between \$450,000 and \$600,000, with between \$75,000 and \$225,000 from this budget being dedicated for media placement, print production, and other third-party and out of pocket expenses." And they also state "Our estimate of work is as follows:"

To submit a range of pricing is very clearly an estimate and not an exact price. The wording of their Creative Price and Consulting Price is also preceded by the word "estimate." We therefore hold that, if this proposal is held to the same standard as VantagePoint's proposal, the total possible cost to the State of South Carolina could not be determined and the awarded proposal should also be deemed Non-Responsive.

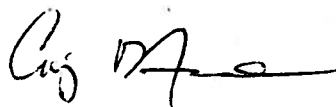
Relief:

VantagePoint is requesting the following points of relief:

1. Reconsider your Determination that the VantagePoint proposal is Non-Responsive, based on points 1 through 6 above, and allow the entire VantagePoint proposal to be considered on its merits.
2. Or, alternately, find the awarded proposal also Non-Responsive, based on point 7 above.
3. Provide information on any requests for clarification regarding Price that were received and responded to prior to the deadline.
3. Consider rewording future RFPs to make the intention of Price requirements clear.
4. As we have stated previously, award the Contract to the most-qualified in-state firm, in keeping with the appropriate use of taxpayer money and the Department of Commerce's stated purpose.
5. Please respond as to the status of our Protest Response by email at coneal@vantagep.com or by phone call at (864) 331-1260.

Again, thank you for your quick and thorough response to our concerns. Please understand that we are not just being "sore losers", but are pointing out valid concerns that would legitimize our claim that we have been unfairly excluded from consideration for this contract.

Thank you for your consideration,



Craig O'Neal
President/CEO, VantagePoint, Inc.

November 21, 2008

Letter of Protest

Solicitation: 5400000577

Description: SC Department of Commerce Advertising Campaign

Dear Sir:

VantagePoint, Inc. is hereby lodging a formal protest of the Intent to Award, as posted on November 20, 2008, for the SC Department of Commerce Advertising Campaign.

We maintain that the selection of an out-of-state firm, the selection of a firm without specific experience required in the RFP, the awarding of a contract that is substantially higher in cost than another qualified offer, as well as a selection process that appears to not have given full consideration to qualified in-state firms, are inappropriate given the Department's stated purpose and funding sources.

Grounds:

We are filing this protest on the following grounds:

1. Awarding this contract to an out-of-state agency is not in keeping with the Department's stated purpose. On the Department's website (www.sccommerce.com/resources/agencyoverview.aspx), it is stated "the Department of Commerce works to recruit new businesses and help existing businesses grow" and "is committed to helping businesses prosper in South Carolina."

To award \$600,000 of business to a company not located in South Carolina seems to be directly contrary to this mission.

2. Awarding this contract to an out-of-state agency sends South Carolina taxpayer dollars out of state. When qualified RFP respondents are located in-state, the argument could be made that this contract inappropriately subsidizes the economic opportunity of out-of-state companies using South Carolina taxpayer dollars.

3. Awarding this contract, which specifically called for a full-service agency with experience in economic development and in marketing to businesses, to an interactive agency with little published background in either area – at least as shown on their website – is not in keeping with the requirements of the RFP. As an in-state, full-service agency with experience and awards in each of these areas, VantagePoint respectfully takes exception to this Intent to Award to a firm without such qualifications.

4. Awarding this contract with an award amount at least 47% higher (\$600,000 vs. \$408,000) than that of other qualified offers appears to be an inefficient use of taxpayer dollars, especially in light of the current economic climate and reduced state budgets.

5. Awarding this contract without thoroughly vetting all qualified in-state respondents creates the appearance that every effort was *not* made to use an in-state firm.

VantagePoint holds strongly that we met or exceeded every qualification required in the RFP. We received no communication to the contrary: VantagePoint was never contacted by the agency to clarify any of its submissions, we were not given an opportunity for an oral presentation, and we have confirmed with each of our listed references that they were not contacted to determine our capabilities outside of the RFP response. Therefore, we are left to assume, in the absence of further communication, that we were qualified respondents and were overlooked while an out-of-state company was selected.

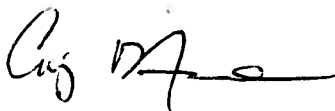
Relief:

VantagePoint is requesting the following four points of relief:

1. Immediately suspend the Intent to Award, pending the resolution of the remaining points of relief.
2. Provide VantagePoint the following information:
 - a. Our proposal score, broken down by section as per the RFP ✓
 - b. The proposal score of all in-state respondents, broken down by section as per the RFP
 - c. The proposal score of the Awarded firm ✓
 - d. The number of in-state and out-of-state respondents - C.M.
 - e. The names of firms who were requested to give oral presentations by the Department of Commerce
 - f. A redacted copy of the RFP response of Virilion, Inc. ✓
3. Ultimately, award the Contract to the most-qualified in-state firm, in keeping with the appropriate use of taxpayer money and the Department of Commerce's stated purpose.
4. Please respond as to the status of our Protest by email at coneal@vantagep.com or by phone call at (864) 331-1260 before December 2, 2008.

We look forward to your speedy response on our relief points. As a business founded and headquartered in the state of South Carolina for its entire 15-year history, we feel confident that we can reach a timely and agreeable solution that will be best for the state of South Carolina, its resident businesses, and its taxpayers.

Sincerely,



Craig O'Neal
President/CEO, VantagePoint, Inc.

Martin, Deb

From: Protest-MMO
Sent: Wednesday, November 26, 2008 12:07 PM
To: _MMO - Procurement; Shealy, Voight
Subject: FW: Protest Letter
Attachments: VantagePoint SC DOC protest letter.doc

From: Craig O'Neal[SMTP:CONEAL@VANTAGEP.COM]
Sent: Wednesday, November 26, 2008 12:04:32 PM
To: Protest-MMO
Subject: Protest Letter
Auto forwarded by a Rule

In accordance with Section 11-35-4210, we are filing a letter of protest, setting forth our grounds for the protest and the relief that we are requesting for solicitation 5400000577, via the attached letter. If you have any questions, please feel free to contact me at the phone number below.

Thank you in advance for your review and serious consideration of this matter.

Best regards,

Craig

Craig O'Neal
President/CEO
VantagePoint
864.331.1260
www.vantagep.com
Insight. Ideas. Impact.
BtoB Magazine 2007 & 2008 Top Agency

12/1/2008